

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Menn-Stan Corp.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of
Corporation Franchise Tax
under Article 9A of the Tax Law
for the Years 1971,1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January, 1980, he served the within notice of Decision by certified mail upon Menn-Stan Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Menn-Stan Corp.
3156 Niagara Falls Blvd.
North Tonawanda, NY 14120

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of January, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Menn-Stan Corp.

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for Redetermination of a Deficiency or a Revision
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Corporation Franchise Tax
under Article 9A of the Tax Law
for the Years 1971,1972.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January, 1980, he served the within notice of Decision by certified mail upon William Frankenstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. William Frankenstein
3156 Niagara Falls Blvd.
N. Tonawanda, NY 14120

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
11th day of January, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 11, 1980

Menn-Stan Corp.
3156 Niagara Falls Blvd.
North Tonawanda, NY 14120

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William Frankenstein
3156 Niagara Falls Blvd.
N. Tonawanda, NY 14120
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MENN-STAN CORP.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the	:	
Tax Law for the Years 1971 and 1972.	:	

Petitioner, Menn-Stan Corp., 3156 Niagara Falls Boulevard, North Tonawanda, New York 14120, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1971 and 1972 (File No. 11678).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on October 24, 1977 at 1:15 P.M. Petitioner appeared by William Frankenstein, CPA. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioner is entitled to an investment tax credit for various expenses for equipment and materials purchased by it.

FINDINGS OF FACT

1. Petitioner, Menn-Stan Corp., is a domestic corporation operating a wholesale and retail business for the sale of plants, bushes, flowers, landscaping accoutrements, tools and all other things commonly used with regard to lawn and garden planting and care.

2. Petitioner timely filed corporation franchise tax returns for 1971

and 1972, on which investment tax credits were taken by petitioner for the purchase of various items, to wit: Automotive equipment, plow, used furniture and fixtures, new furniture and fixtures, buildings, major building improvement, blacktopping, fencing, tractor attachment, truck, roadways and bins.

3. On January 15, 1975, the Corporation Tax Bureau issued notices of deficiency for 1971 and 1972, disallowing the investment tax credit taken.

4. Petitioner purchased pick-up trucks (listing same as automotive equipment) which were used on and off petitioner's premises for the delivery of merchandise, as well as moving the various items offered for sale by petitioner from place to place on its premises.

5. Petitioner erected or installed various roadways to ease the customer's shopping as well as to simplify petitioner's work in moving plants, etc. from one spot to another.

6. Petitioner blacktopped its parking lot to ease traffic and parking, as well as to facilitate the preparation for and sale of items sold by petitioner to its customers.

7. Petitioner purchased two calculators for office use, listing same as new and used furnishings and fixtures.

8. Petitioner constructed a building for use in its potting operation which was used 100 percent for that purpose only three months of the year, while no building was solely devoted to growing plants.

9. Petitioner expended funds for the construction of a concrete floor in a building to improve efficiency and to ease the movement of shopping carts by customers throughout the premises.

10. Petitioner could only guess what piece of equipment might have been listed as a tractor attachment. Similarly, no evidence, other than supposition,

was introduced to identify the item listed as "truck" on the investment tax credit form.

11. Petitioner purchased bins for the efficient storage of products and to eliminate the waste of such things as topsoil, peat moss, gravel or sand.

12. Petitioner constructed a large building primarily for sales, but also for the control of incoming or outgoing goods.

CONCLUSIONS OF LAW

A. That section 210.12(b) of the Tax Law provides for a credit with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are:

"depreciable pursuant to section one hundred sixty-seven of the Internal Revenue Code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the Internal Revenue Code, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing."

B. The term "principally used" means more than fifty percent. A building or addition to a building is principally used in production where more than fifty percent of its usable business floor space is used in storage or production. (See 20 NYCRR 5-2.4(c), which although effective for all taxable years beginning on or after January 1, 1976, reflects the position of the State Tax Commission during the years at issue.)

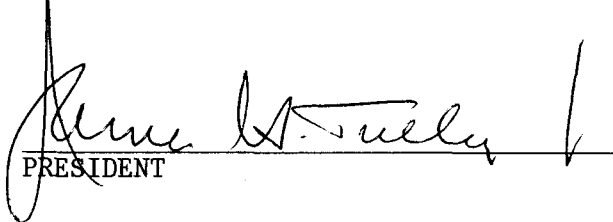
C. That although some of the items for which credit was claimed may have been used in manufacturing, horticulture or other activity enumerated in the statute, petitioner has failed to sustain its burden of proof imposed by section 1089(e) of the Tax Law to show that any of such items were principally used by taxpayer in such activities.


D. That the petition of Menn-Stan Corp. is denied and the notices of deficiency are sustained.

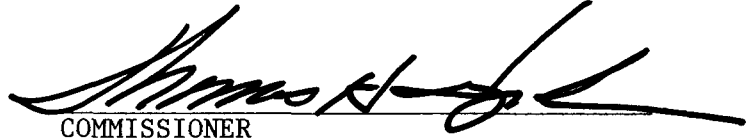
DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER